

C-50 6113/13

**2013 CEO NEGOTIATIONS
CITY PACKAGE PROPOSAL C***

TERM

One Year Term

WAGES

2% General Wage Increase

HIGHER CLASS PAY

As Proposed on June 6, 2013 (City Proposal #4)

DISABILITY LEAVE SUPPLEMENT

As Proposed on March 28, 2013 (City Proposal #12)

CALL BACK AND STANDBY PAY

As Proposed on May 23, 2013 (City Counterproposal to Union Proposal #10)

GRIEVANCE

See Attached (City Counterproposal to Union Proposal #4)

CONTRACTING OUT

See Attached (City Counterproposal to Union Proposal #12)

OVERTIME AND COMPENSATORY TIME

See Attached (City Counterproposal to Union Proposal #13)

SICK LEAVE PAYOUT

See Attached (City Proposal #18)

TENTATIVE AGREEMENTS

- o Holidays - Tentative Agreement Reached on April 17, 2013
- o Voluntary Dues Deductions - Tentative Agreement Reached on May 15, 2013
- o Grievance Procedure - Tentative Agreement Reached on May 15, 2013
- o Health and Dental In Lieu - Tentative Agreement Reached on May 15, 2013
- o Citywide Labor Management Committee - Tentative Agreement Reached on May 15, 2013
- o Leaves of Absence - Tentative Agreement Reached on May 23, 2013
- o Safety - Tentative Agreement Reached on May 23, 2013
- o Layoff - Tentative Agreement Reached on June 6, 2013

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SIDE LETTER AGREEMENTS

Public Transit Side Letter Agreement Reached on May 23, 2013

REOPENERS

- Notwithstanding any other provision of this Agreement, the parties agree to continue to meet and confer over retiree healthcare benefits and funding upon request of either party. This may include but is not limited to alternatives to reduce the cost of retiree healthcare benefits and options for current employees that comply with IRS regulations. The City and CEO shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.
- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and CEO shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and CEO shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over active healthcare benefits upon request of either party.

Negotiations between the City and CEO shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and CEO shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

** This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals.*

UNION PROPOSAL #4 – GRIEVANCE PROCEDURE

City Counterproposal:

ARTICLE 12 GRIEVANCE PROCEDURE

12.3 STEP I

12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. The grievance must be presented within ~~ten (10)~~ twenty one (21) working calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ~~ten (10)~~ twenty one (21) working calendar days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

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UNION PROPOSAL #12 – CONTRACTING OUT AND VOLUNTEERS

City Counterproposal:

ARTICLE 1 RECOGNITION

1.1 Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Confidential Employees' Organization, Local 101, AFSCME, AFL-CIO, hereinafter referred to as the Employee Organization is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute an appropriate unit.

~~1.2 The City agrees to meet and confer with the Employee Organization prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.~~

ARTICLE 38 CONTRACTING OUT

~~38.1 The City agrees to meet and confer with the Employee Organization prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.~~

UNION PROPOSAL #13 – OVERTIME AND COMPENSATORY TIME

City Counterproposal:

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.6.1 To the extent possible and with the exception of any shift changes, when a non-benefited part-time employee has worked six (6) consecutive days, the employee, in so much as possible, shall be provided with one (1) scheduled day off. Nothing herein contained, however, shall limit the right of the Department Director or designee to determine the days of the week and hours of each day when any such part-time non-benefited employee shall be required to work, or whether such part-time non-benefited employee shall work at all.

CITY PROPOSAL #18 – SICK LEAVE PAYOUT

City Proposed Language:

- 18.2 Any employee hired on or after January 1, 2012, shall not be eligible for sick leave payout.
- 18.3 Upon a release of claims being signed by the retiree, retroactive payments shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 18.5 and 18.6 below. This will resolve any claims related to sick leave payout upon retirement, including but not limited to:-
- 18.3.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing resolves the issues underlying unfair practice charge no. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012; therefore, the Union agrees to withdraw the charge no later than fifteen (15) calendar days after the execution of this agreement.
- 18.3.2 Case No. 1-12-CV-237150: *[Pending language that the Union will withdraw from Case No. 1-12-CV-237150]*
- 18.4 For employees hired on or before December 31, 2011, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
- 18.4.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
- 18.4.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.
- 18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is

not credited with at least 15 years of service in any applicable retirement plan.

18.4.4 Death of Separated Employee. The estate of any full-time or eligible part-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.

18.5 Effective December 31, 2011, for purposes of calculating a sick leave payout, employees' sick leave balances and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on December 31, 2011. Any sick leave usage after December 31, 2011, will come from the sick leave balance accrued after December 31, 2011. An employee will continue to accrue sick leave after December 31, 2011, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on December 31, 2011, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee does not have available sick leave to use that was accrued after December 31, 2011, and uses sick leave and reduces their sick leave balance on December 31, 2011, to 50 hours, they will only be entitled to a sick leave payout of 50 hours, regardless of any sick leave accrued after December 31, 2011.

18.6 Payout shall be determined as follows.

18.6.1 Payout shall be determined as follows: If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay as of December 31, 2011, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

18.6.2	Less than 400 hours -	Hours accumulated x 50% of final hourly rate;
	or 400 - 799 hours -	Hours accumulated x 60% of final hourly rate;
	or 800 - 1200 hours -	Hours accumulated x 75% of final hourly rate.

18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with

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the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.